

1 **UNITED STATES DISTRICT COURT**2 **DISTRICT OF NEVADA**

3 STEVE COLEMAN,

4 Plaintiff

5 v.

6 BRIAN SMITH, et al.,

7 Defendants

8 Case No.: 3:23-cv-00232-ARTCSD

9 **Order**

10 Re: ECF Nos. 28, 29

11 Before the court is motion for leave to amend and proposed first amended complaint  
12 (FAC) and motion for leave to add additional parties (which is duplicative of the motion for  
13 leave to amend). (ECF Nos. 28, 28-1, 29.) Defendants filed a response. (ECF No. 31.) Plaintiff  
14 filed a reply. (ECF No. 32.)15 For the reasons set forth below, the motions are denied without prejudice, and Plaintiff  
16 will be given another opportunity to submit an amended complaint.17 **I. DISCUSSION**18 Plaintiff is an inmate in custody of the Nevada Department of Corrections (NDOC),  
19 proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. The court screened  
20 his original complaint and allowed him to proceed with an Eighth Amendment deliberate  
21 indifference to serious medical needs claim against defendants Brian Smith, John Keast  
22 (misidentified by Plaintiff as Keist), Bob Faulkner, Kimberly McCoy, and Erin Parks based on  
23 allegations that they failed to provide him with adequate medical care for his serious eye  
condition and allowed him to be transferred to other prison facilities which further delayed his

1 care. (ECF No. 4.) Defendant Rivas was dismissed because there was no basis for holding him  
 2 liable on a supervisory basis. (*Id.*)

3 Plaintiff has filed a motion for leave to amend, asserting that during the case management  
 4 conference (CMC) that Brian Smith was not working in the role of Director of Nursing Services  
 5 (DONS) at Warm Springs Correctional Center (WSCC) during the time period giving rise to his  
 6 allegations, but Candice Rambur and/or Megan Sullivan were in that role. Smith was voluntarily  
 7 dismissed at the CMC, and Plaintiff seeks to amend to assert claims against Rambur and Sullivan  
 8 in place of Smith.

## 9 **II. LEGAL STANDARD**

10 “A party may amend its pleading once as a matter of course within: (A) 21 days after  
 11 serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after  
 12 service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f),  
 13 whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(A), (B). Otherwise, a party must seek the opposing  
 14 party’s written consent or leave of court to amend a pleading. Fed. R. Civ. P. 15(a)(2). Here,  
 15 Plaintiff was required to seek leave to amend.

16 “The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).  
 17 Leave to amend need not be given where amendment: “(1) prejudices the opposing party; (2) is  
 18 sought in bad faith; (3) produces an undue delay in litigation; or (4) is futile.” *Amerisource*  
 19 *Bergen Corp. v. Dialysis West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006) (citation omitted).

## 20 **III. DISCUSSION**

21 Plaintiff’s proposed FAC has multiple deficiencies that need to be corrected.

22 First, the FAC still names Brian Smith in the caption; John Keast’s name is spelled  
 23 incorrectly (it should be Keast and not Keist); Erin Parks name is spelled incorrectly (it should be

1 Erin and not Aaron); and David Rivas is still listed as a defendant and mentioned in the  
2 conclusion of the proposed FAC.

3 Second, Defendants have advised that in fact Megan Sullivan did not work at WSCC  
4 during the relevant time period, and instead, a Patti Smith may be a proper defendant (along with  
5 Candice Rambur). Plaintiff indicates in his reply brief that he would like to name Patti Smith in  
6 place of Megan Sullivan.

7 Third, the proposed FAC references the Fourteenth Amendment when Plaintiff's claims  
8 are properly asserted under the Eighth Amendment.

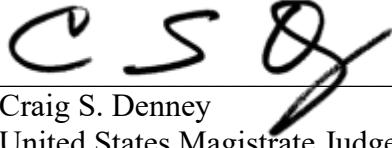
9 Plaintiff asks the court to simply adopt these changes without actually correcting them in  
10 his proposed pleading. The court declines to do so. Instead, the court will deny Plaintiff's motion  
11 for leave to amend without prejudice and will give Plaintiff one more opportunity to submit a  
12 proposed amended complaint that corrects the deficiencies noted above.

#### 13 IV. CONCLUSION

14 Plaintiff's motion for leave to amend and motion to add additional parties (ECF Nos. 28,  
15 29) are **DENIED WITHOUT PREJUDICE**. Plaintiff has up to and including **January 3, 2025**,  
16 to file a motion for leave to amend and proposed FAC that corrects the deficiencies noted above.

17 **IT IS SO ORDERED.**

18 Dated: December 12, 2024

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Craig S. Denney  
United States Magistrate Judge

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